

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:

AMENDS 312 IAC 5-8-2 AND 312 IAC 5-8-3)	Administrative Cause
GOVERNING BOATING RESTRICTIONS ON)	Number: 14-017L
DESIGNATED PORTIONS OF LAKE MICHIGAN)	
FOR PUBLIC AND NAVIGATIONAL SAFETY)	LSA Document #14-25(F)

**REPORT ON RULE PROCESSING, WRITTEN COMMENTS, COMMENTS AT
PUBLIC HEARINGS, AND HEARING OFFICER ANALYSES WITH
RECOMMENDATIONS REGARDING FINAL ADOPTION**

1. RULE PROCESSING

For consideration are proposed amendments to 312 IAC 5-8-2 and 312 IAC 5-8-3 which provide boating restrictions on designated portions of Lake Michigan. Proposed amendments to 312 IAC 5-8-2 would amend the existing no-boat zones adjacent to the Jeorse Park Beach in East Chicago and to the Marquette Park Beach in Gary to conform to improvements and changed shorelines. The no-boat zone rule description at Marquette Park Beach is not modified. But the boundaries are extended to coincide with an enlarged parking lot. The amendments to 312 IAC 5-8-3 would modify the no-boat zone adjacent to the Indiana Dunes State Park to accommodate a kayak and canoe corridor. The corridor supports Indiana participation in the Lake Michigan Water Trail designated by the U.S. Department of Interior.

The Natural Resources Commission ("Commission") gave preliminary adoption to the proposed amendments on January 21, 2014. As reported in the pertinent portions of the January 21 minutes:

Consideration of preliminary adoption of consolidated amendments to 312 IAC 5-8 that governs restricted boating zones along the Indiana shoreline of Lake Michigan; Administrative Cause No. 14-017L

Lieutenant Colonel Steve Hunter presented this item. He said for public and navigational safety, rule amendments are needed to boating restrictions on designated portions of Lake Michigan. With respect to 312 IAC 5-8-2 for Lake County, improvements to facilities

along public beaches in East Chicago and in Gary have caused changes so that 2001 geographic descriptions of no-boat zones are no longer compatible. With respect to 312 IAC 5-8-3 for Porter County, the Lake Michigan Water Trail (designated as a National Recreation Trail by the U.S. Department of the Interior in 2011) results in the need for kayakers to use the westerly corridor of a no-boat zone for ingress and egress to Indiana Dunes State Park. In all three situations, the amendments would make the rules consistent with how the areas were managed in 2013.

Executive Order 13-03 required agencies to “suspend rulemaking action on any proposed rules for which a notice of intent to adopt a rule...was not submitted to the office of the Indiana *Register* on or before January 14, 2013.” Additional compliance provisions were included in Financial Management Circular 2013-01. On November 6, 2013, Indiana Department of Natural Resources (“DNR”) Director, Cameron Clark, submitted to the Office of Management and Budget (“OMB”) a “Request for exemption to the suspension of rulemaking action under the provisions of Executive Order 13-03” for this rule proposal. On November 14, 2013, Christopher D. Atkins, OMB Director, wrote that “DNR’s request qualifies for an exception under Section 6(g) of Executive Order 13-03.”

The “Notice of Intent” to adopt the amendments was posted to the Indiana *Register* at 20140205-IR-312140025NIA on February 5, 2014. The notice identified Lieutenant Thomas J. Torsell, Jr., Commander of District 10 of the Division of Law Enforcement, as the “small business regulatory coordinator” for purposes of IC 4-22-2-28.1.

The Commission caused the information required by IC 4-22-2-22.5 to be included in the rulemaking docket maintained on its website at <http://www.in.gov/nrc/2377.htm>. The rulemaking docket was also updated periodically as the rule adoption progressed.

As specified by the Executive Order that then applied, proposed fiscal analyses of the rule proposal, the justification statement prepared under IC 4-22-2-24(d)(3), and the rule standards analysis under IC 4-22-2-19.5 were submitted, along with a copy of the proposed rule language and a copy of the posted Notice of Intent, to OMB and to the Administrative Rules Oversight Committee (“AROC”) on February 24, 2014. In a letter dated March 19, 2014, Brian E. Bailey, Director, State Budget Agency, wrote to the Commission to recommend the proposed rule amendments be approved.

On March 20, 2014, the Division of Hearings submitted the rule proposal to the Legislative Services Agency (“LSA”), along with the “Statement Concerning Rules Affecting Small Business” (also known as the “Economic Impact Statement”). The Notice of Public Hearing and the Justification Statement (IC 4-22-2-24(d)(3)) were submitted to LSA on March 25, 2014. On April 2, 2014, the following were posted to the *Indiana Register*: the text of the proposed rule (20140402-IR-312140025PRA); the notice of public hearing (20140402-IR-312140025PHA); and the Economic Impact Statement (20140402-IR-312140025EIA). Following receipt from LSA of an “Authorization to Proceed”, the Division of Hearings caused Notice of Public Hearing to be published on April 1, 2014 in the Indianapolis *Daily Star*, a newspaper of general circulation in Marion County, and *The Times of Northwest Indiana*, a newspaper of general circulation in Porter County and Lake County.

The Statement Concerning Rules Affecting Small Businesses (the “EIS”), as required under IC 4-22-2.1-5, and submitted by the Small Business Regulatory Coordinator, indicates:

Economic Impact Statement
LSA Document #14-25

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

Estimated Number of Small Businesses Subject to this Rule:

No small businesses are subject to or will be impacted by this rule. The rule impacts governmental entities and the public use of the public waters of Lake Michigan. The most likely small business that would be impacted by the rule are those which sell buoys or provide installation services for them.

Estimated Average Annual Reporting, Record Keeping, and Other Administrative Costs Small Businesses Will Incur for Compliance:

Small businesses are not impacted by this rule because there is no service they would be required to provide within the regulated areas.

Estimated Total Annual Economic Impact on Small Businesses to Comply:

There will be no economic impact on small businesses as a result of this rule as small businesses are not impacted by the rule.

Justification Statement of Requirement or Cost:

Not applicable

Regulatory Flexibility Analysis of Alternative Methods:

Small businesses are not regulated by this rule. The rule impacts operators of boats used on the public waters of Lake Michigan.

Since it was found that the proposed rule would not have administrative or economic impacts on small businesses, the rule proposal was not forwarded to the Indiana Economic Development Corporation (“IEDC”).

2. WRITTEN COMMENTS RECEIVED BY THE COMMISSION THROUGH ITS WEBSITE OR BY FIRST CLASS MAIL

Three telephone inquiries were received concerning the rule proposal, and one of the callers indicated an intention to provide written comments. But no written comments were received.

3. PUBLIC HEARING

The May 1, 2014 public hearing was convened as published. No persons attended other than professionals with the Department of Natural Resources. The Hearing Officer reported to those present it had been previously announced the comment period would close on May 2, 2014. The close of the public comment period was also posted on the Commission’s online rule docket posted at <http://www.in.gov/nrc/2377.htm>.

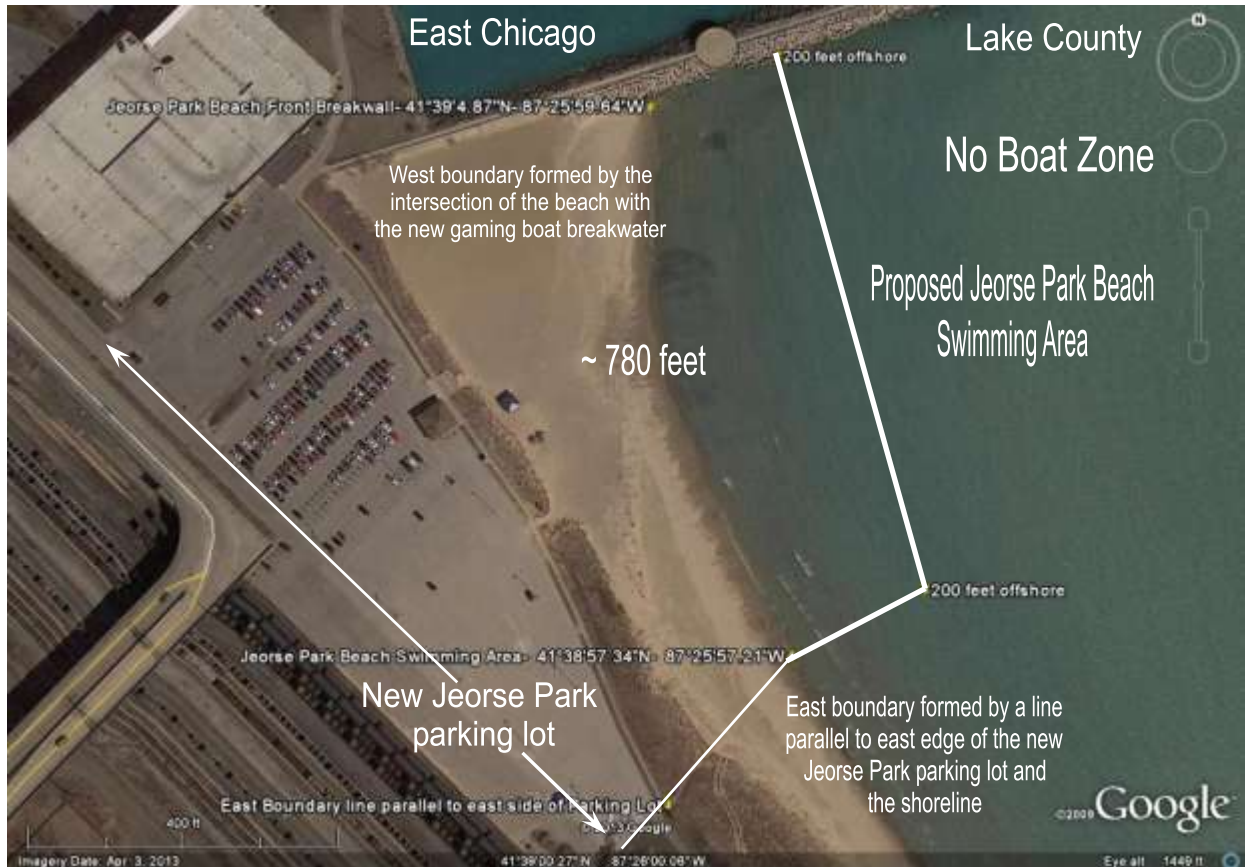
5. HEARING OFFICERS ANALYSES WITH RECOMMENDATIONS REGARDING FINAL ADOPTION

The geographic and legal circumstances for the three sites at issue in this rule adoption each have unique circumstances that warrant modifications. These are considered separately moving from west to east on the shoreline.

First, at Jeorse Park adjacent to East Chicago, a new breakwater was constructed for the Ameristar Casino following establishment and description of the current no-boat zone. Sand filled the current no-boat zone so that the effective swimming area is now outside and lakeward of what is described in the existing rule. If buoys are placed in the lake to help protect swimmers using the Jeorse Park beach, those buoys are not supported by the rule. The amendments would cause the buoys to match the protected no-boat zone for swimmers and would also support law enforcement directed to a boat operator who violates the zone identified by buoys. The history is depicted with aerial photographs provided by DNR Lake Michigan Specialist, Stephen Davis:



The proposed new zone adjacent to Jeorse Park is depicted in the next aerial photo. The starting point for the proposed zone uses the shoreline and can adjust to period changes to the shoreline. Davis suggested to the hearing officer that he does not believe the shoreline is likely to change markedly as a result of sedimentation if the current configuration of the structures along and within the shoreline is not modified.



Second, at Marquette Park adjacent to Gary, the no-boat zone would be expanded to accommodate increased attendance that results from an expanded parking lot and other significant park improvements. This modification does not result in a change to rule language since the no-boat zone boundaries were previously described using the parking lot, and will continue to be described using the parking lot, but the enlarged parking lot has itself been relocated westerly. The modification may not have required rule adoption but was included in public notices to support transparency and to receive any public comments. Davis illustrated below the existing no-boat zone with maroon shading and the additional no-boat zone with chartreuse shading:



Third, at Indiana Dunes State Park in Chesterton, a limited exception would be established to the existing no-boat zone to allow for the ingress and egress of persons using kayaks or canoes. The lane or channel allows Indiana to participate in the Lake Michigan Water Trail, which has been designated by the U.S. Department of Interior, as well as in the Northwest Indiana Regional Plan Commission's Regional Greenways and Blueways Plan. See <http://www.greenwaysblueways.com/pdf/LakeMichigan.pdf>. Indiana Dunes State Park is critical to Indiana's participation in the 1,000 mile circuit as it is the only Indiana facility on Lake Michigan which provides camping facilities and is accessible directly to kayakers and canoeists. Davis identified the location of the proposed new channel as follows:



The proposed amendments to 312 IAC 5-8-2 and 312 IAC 5-8-3 are appropriate, as posted in the *Indiana Register* and set forth in Exhibit A, for consideration as to final adoption.

Dated: May 3, 2014

Stephen L. Lucas
Hearing Officer

EXHIBIT A**TITLE 312 NATURAL RESOURCES COMMISSION****Final Rule**

LSA Document #14-25(F)

DIGEST

Amends 312 IAC 5-8-2 and 312 IAC 5-8-3, which provide boating restrictions on designated portions of Lake Michigan for public and navigational safety, to amend the existing no-boat zones adjacent to the Jeorse Park Beach in East Chicago and the Marquette Park Beach in Gary in 312 IAC 5-8-2 to conform to improvements and changed shorelines since the rules were adopted in 2002, though the description of the no-boat zone is not modified for Marquette Park Beach, but the boundaries are extended to coincide with an extended parking lot that is referenced to describe the zone and, for the no-boat zone adjacent to Indiana Dunes State Park in 312 IAC 5-8-3, a kayak and canoe corridor is established for participation in the Lake Michigan Water Trail designated by the U.S. Department of Interior. Effective 30 days after filing with the Publisher.

312 IAC 5-8-2; 312 IAC 5-8-3

SECTION 1. 312 IAC 5-8-2 IS AMENDED TO READ AS FOLLOWS:

312 IAC 5-8-2 Lake County waters of Lake Michigan; boating restrictions**Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3; IC 14-29-1-8****Affected: IC 14**

Sec. 2. A person must not operate a boat in the following Lake County zones on Lake Michigan:

(1) Near Hammond, adjacent to lands managed by the Hammond Department of Parks and Recreation, at the following locations:

(A) The site known as the Lake Front Beach with:

- (i) the western boundary beginning at the Southern Electric Company breakwall and the Lake Michigan shoreline extending lakeward and perpendicular to the shoreline for two hundred (200) feet;
- (ii) the eastern boundary beginning at a point one thousand two hundred (1,200) feet from the western boundary and extending lakeward and perpendicular to the shoreline for two hundred (200) feet; and
- (iii) the northern boundary formed by a line running parallel to the shoreline and terminating at the lakeward-most points of the eastern boundary and the western boundary.

(B) The site known as the Hammond Marina Beach with:

- (i) the western boundary beginning at a point two thousand four hundred (2,400) feet east of the Southern Electric breakwall and the Lake Michigan shoreline and extending lakeward and perpendicular to the shoreline for two hundred (200) feet;
- (ii) the eastern boundary at the Hammond Marina breakwall and the Lake Michigan shoreline extending lakeward and perpendicular to the shoreline for two hundred (200) feet; and

- (iii) the northern boundary formed by a line running parallel to the shoreline terminating at the lakeward-most points of the eastern boundary and the western boundary.
- (2) Near Whiting, adjacent to the Whihala Beach County Park at the following locations:
 - (A) The site known as the West Swimming Beach with:
 - (i) the western boundary beginning at the intersection of the Whihala Beach County Park fishing pier and the Lake Michigan shoreline and extending lakeward and parallel to the fishing pier for two hundred (200) feet;
 - (ii) the eastern boundary beginning at a point three hundred eighty (380) feet east of the western boundary and extending lakeward and perpendicular to the shoreline for two hundred (200) feet; and
 - (iii) the northern boundary formed by a line running parallel to the shoreline and terminating at the lakeward-most points of the eastern boundary and the western boundary.
 - (B) The site known as the Pocket Beach with:
 - (i) the western boundary beginning at a point one thousand (1,000) feet east of the Whihala Beach County Park fishing pier and extending lakeward and perpendicular to the shoreline for two hundred (200) feet;
 - (ii) the eastern boundary beginning at a point five hundred ten (510) feet east of the western boundary and extending lakeward and perpendicular to the shoreline for two hundred (200) feet; and
 - (iii) the northern boundary formed by a line running parallel to the shoreline and terminating at the lakeward-most points of the eastern boundary and the western boundary.
 - (C) The site known as the East Swimming Beach with:
 - (i) the eastern boundary beginning at the intersection of the western breakwater of the boat launch facility at Whihala Beach County Park and the Lake Michigan shoreline and extending lakeward and parallel to the breakwater for two hundred (200) feet;
 - (ii) the western boundary beginning at a point one thousand six hundred (1,600) feet west of the eastern boundary and extending lakeward and perpendicular to the shoreline for two hundred (200) feet; and
 - (iii) the northern boundary formed by a line running parallel to the shoreline and terminating at the lakeward-most points of the eastern boundary and the western boundary.
- (3) Adjacent to East Chicago, at a site known as the Jeorse Park Beach Swimming Area with
 - ~~(A) the western boundary being formed by the breakwall of the Jeorse Park Beach front;~~
 - ~~(B) the eastern boundary being formed by a north-south line aligned with the rock revetment located at the East Chicago corporation boundary; and~~
 - ~~(C) the northern boundary being formed by a line running two hundred (200) feet from and parallel to the shoreline and terminating at the eastern boundary and the western boundary~~ **the eastern boundary beginning at a point on the Lake Michigan shoreline formed by extending the eastern boundary of the Jeorse Park parking lot in a straight line; then in a straight line perpendicular to the shoreline for two hundred (200) feet; and then in a straight line in a generally northerly or northwesterly direction to the breakwater southeast of the Ameristar Casino.**
- (4) Adjacent to Gary, as follows:
 - (A) At a site known as the Lake Street Swimming Area with:
 - (i) the western boundary beginning at the intersection of a line parallel to the eastern edge of the Lake Street parking lot and the Lake Michigan shoreline and

extending lakeward and perpendicular to the shoreline for two hundred (200) feet;

(ii) the eastern boundary beginning at a point seven hundred ninety-eight (798) feet east of the western boundary and extending lakeward and perpendicular to the shoreline for two hundred (200) feet; and

(iii) the northern boundary formed by a line running parallel to the shoreline and terminating at the lakeward-most points of the western boundary and the eastern boundary.

(B) At a site known as the Marquette Park Swimming Area with:

(i) the western boundary beginning at the intersection of a line parallel to the western edge of the Marquette Park main parking lot and the Lake Michigan shoreline and extending lakeward and perpendicular to the shoreline for two hundred (200) feet;

(ii) the eastern boundary beginning at the intersection of the centerline of Montgomery Street and the Lake Michigan shoreline and extending lakeward and perpendicular to the shoreline for two hundred (200) feet; and

(iii) the northern boundary formed by a line running parallel to the shoreline and terminating at the lakeward-most points of the western boundary and the eastern boundary.

(Natural Resources Commission; 312 IAC 5-8-2; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2378, eff Jan 1, 2002; readopted filed May 29, 2008, 1:53 p.m.: 20080625-IR-312080057RFA; errata filed Jun 2, 2009, 10:29 a.m.: 20090624-IR-312090386ACA)

SECTION 2. 312 IAC 5-8-3 IS AMENDED TO READ AS FOLLOWS:

312 IAC 5-8-3 Porter County waters of Lake Michigan; boating restrictions

Authority: IC 14-10-2-4; IC 14-11-2-1; IC 14-15-7-3; IC 14-29-1-8

Affected: IC 14

Sec. 3. A person must not operate a boat in the following Porter County zones on Lake Michigan:

(1) Near Gary and Ogden Dunes, at a site adjacent to the Indiana Dunes National Lakeshore known as the West Beach Swimming Area, with:

(A) the western boundary beginning at the intersection of the Lake-Porter County line and the shoreline and extending two hundred (200) feet lakeward along the county line;

(B) the eastern boundary beginning at the intersection of the Ogden Dunes pump house and the shoreline and extending lakeward and perpendicular to the shoreline for two hundred (200) feet; and

(C) the northern boundary formed by a line running parallel to the shoreline and terminating at the lakeward-most points of the western boundary and the eastern boundary.

(2) Adjacent to Porter, at a site known as the Porter Beach Association Swimming Area, with:

(A) the western boundary beginning at the intersection of the centerline of Dearborn Street and the shoreline and extending lakeward and perpendicular to the shoreline for a distance of two hundred (200) feet;

(B) the eastern boundary beginning at the intersection of the western edge of State Street and the shoreline and extending perpendicular to the shoreline for two hundred (200) feet; and

(C) the northern boundary formed by a line running parallel to the shoreline and terminating at the lakeward-most points of the western boundary and the eastern boundary.

(3) Adjacent to Porter, at a site known as the Porter Beach Swimming Area, with:

- (A) the western boundary beginning at the intersection of the western edge of State Street and the shoreline and extending lakeward and perpendicular to the shoreline for a distance of two hundred (200) feet;
- (B) the eastern boundary coextensive with the western boundary of the zone established in subdivision (4); and
- (C) the northern boundary formed by a line running parallel to the shoreline and terminating at the lakeward-most points of the western boundary and the eastern boundary.

However, excluded from this zone is a boat channel, with its western boundary beginning at the intersection of the western edge of Wabash Street and the shoreline and extending entirely through the zone lakeward and perpendicular to the shoreline, and with its eastern boundary beginning at the intersection of the eastern edge of Wabash Street and the shoreline and extending lakeward and parallel to the western boundary of the boat channel.

(4) Adjacent to the Indiana Dunes State Park, at a site known as Indiana Dunes State Park Swimming Area, with:

- (A) the western boundary beginning at the intersection of the western park boundary and the shoreline and extending lakeward and perpendicular to the shoreline for two hundred (200) feet;
- (B) the eastern boundary beginning at a point one thousand eight hundred (1,800) feet east of the western boundary and extending lakeward and perpendicular to the shoreline for two hundred (200) feet; and
- (C) the northern boundary formed by a line running parallel to the shoreline and terminating at the lakeward-most points of the western boundary and the eastern boundary.

However, a nonmotorized kayak or canoe may be used for ingress into or egress from Indiana Dunes State Park through a channel that is delineated by buoys.

(5) Near Beverly Shores, at a site adjacent to the Indiana Dunes National Lakeshore and known as the Kemil Beach Swimming Area, with:

- (A) the western boundary at the eastern boundary of the Indiana Dunes State Park;
- (B) the eastern boundary six hundred (600) feet east of the western boundary and extending lakeward and perpendicular to the shoreline for two hundred (200) feet; and
- (C) the northern boundary formed by a line running parallel to the shoreline and terminating at the lakeward-most points of the eastern boundary and the western boundary.

(6) Near Beverly Shores, at a site adjacent to the Indiana Dunes National Lakeshore and known as the Central Avenue Beach Swimming Area, with:

- (A) the western boundary beginning on the shoreline four hundred (400) feet west of the intersection of the centerline of Central Avenue and the shoreline and extending lakeward and perpendicular to the shoreline for two hundred (200) feet;
- (B) the eastern boundary eight hundred (800) feet east of the western boundary and extending lakeward and perpendicular to the shoreline for two hundred (200) feet; and
- (C) the northern boundary formed by a line running parallel to the shoreline and terminating at the lakeward-most points of the eastern boundary and the western boundary.

(Natural Resources Commission; 312 IAC 5-8-3; filed Mar 23, 2001, 2:50 p.m.: 24 IR 2379, eff Jan 1, 2002; readopted filed May 29, 2008, 1:53 p.m.: 20080625-IR-312080057RFA; errata filed Jun 2, 2009, 10:29 a.m.: 20090624-IR-312090386ACA)